

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHESTER RAYMOND BODMAN,

Defendant-Appellant.

UNPUBLISHED
November 10, 2011

No. 299509
Ionia Circuit Court
LC Nos. 2009-014600-FC;
2009-014601-FC

Before: JANSEN, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction following a jury trial of one count first-degree criminal sexual conduct (CSC I), MCL 750.520b, one count attempted CSC I, MCL 750.520b and MCL 750.92, one count aggravated domestic violence, MCL 750.81a, one count domestic violence, MCL 750.81, one count operating while license suspended causing serious injury, MCL 257.904, and one count failing to stop at an accident, MCL 257.61. Defendant was sentenced to 27 to 60 years in prison with credit for 243 days served for convictions in file 09-14600-FH (charges related to sexual assault), and 30 months to 25 years for convictions in file 09-14601-FH (charges related to the car accident). These sentences are to be served concurrently. We affirm.

On November 19, 2009, in Ionia County, defendant was driving on a suspended license when he struck an oncoming vehicle, causing serious injury to the driver of the other vehicle. Defendant fled the scene. Eventually, he received assistance from his ex-girlfriend, Destiny Roberts, with his injuries. Roberts left defendant, and defendant followed her shortly thereafter as she proceeded on foot toward her apartment. Defendant caught up to her, beat her repeatedly, and raped her, in spite of her repeated protests and attempts to flee.

Defendant first argues that the offenses stemming from the car accident and the offenses stemming from the sexual assault were improperly joined into a single trial. Defendant argues that his motion to sever should have been granted because the charged offenses were not “a

series of connected acts,” nor were they “a series of acts constituting parts of a single scheme or plan,” and they were therefore unrelated for purposes of MCR 6.120.¹ We disagree.

Under MCR 6.120(C)(1), a trial court has discretion to join related offenses in a single trial: “[O]ffenses are related if they are based on (a) the same conduct or transaction, or (b) a series of connected acts, or (c) a series of acts constituting parts of a single scheme or plan.”

We conclude that the charged offenses at issue in the present case were related for purposes of MCR 6.120 as “a series of connected acts.” As he drove around during the afternoon leading up to the accident, defendant and Anthony Geister discussed the problems he had been having with Roberts. After the accident, defendant fled the scene and immediately called Roberts for help. Roberts and defendant met briefly following this phone conversation, at which time she helped clean his wounds. After Roberts left, defendant chased down, beat, and raped her. As a rationale for sexually assaulting Roberts, defendant told her that he would be going back to prison anyway and that this would be the last time they could have sex together.

These circumstances constitute a series of connected events. Not only did both sets of criminal activity occur in close physical and temporal proximity, but they were also causally related in the classic “but for” sense. In other words, but for the accident, defendant would not have contacted Roberts for help, and but for this contact, the charged assaults would not have happened. Accordingly, the trial court did not abuse its discretion in refusing to grant defendant’s motion to sever.

Next, defendant argues that insufficient evidence was adduced to support his CSC I conviction because of the lack of evidence establishing that he sexually penetrated Roberts. Specifically, defendant argues that the statements of witnesses who spoke with Roberts shortly after the alleged sexual assault were ambiguous and did not prove penetration. Further, defendant argues that the forensic evidence was insufficient to prove penetration, because defendant’s DNA was matched only to underwear that Roberts may have previously worn when they had consensual sex two days before.

Sufficiency of evidence is a question of law and is reviewed de novo on appeal. *People v Chapo*, 283 Mich App 360, 363; 770 NW2d 68 (2009). “In evaluating defendant’s claim regarding the sufficiency of the evidence, this Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt.” *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006).

In this case, the prosecution introduced sufficient testimonial and forensic evidence that a trier of fact could find beyond a reasonable doubt that defendant sexually penetrated Roberts’

¹ In his interpretation of the joinder rules, defendant relies heavily on *People v Tobey*, 401 Mich 141; 257 NW2d 537 (1977). Defendant’s reliance is misplaced, however, because our state Supreme Court has stated that “MCR 6.120 superseded *Tobey*.” *People v Williams*, 483 Mich 226, 243; 769 NW2d 605 (2009).

vagina. Lacey Taylor, Roberts' roommate at the time of the assault, testified that after the incident, she found Roberts outside their apartment sitting on the floor, bloody, shaking, and crying. Roberts told Taylor that she had been beaten up and raped by defendant. Roberts told Taylor that defendant had pushed her up against the bleachers, tried to force her to perform oral sex on him, and then proceeded to rape her. The sexual assault nurse examiner who administered a sexual assault kit testified to a similar recounting of events by Roberts. A police officer also testified that Roberts told him that she told defendant "no" repeatedly as he pushed her back onto the bleachers, forced her legs apart, and inserted his penis inside her.

In addition to testimonial evidence, the serology analysis performed by the Michigan State Police on the sexual assault kit administered to Roberts came back positive for the presence of sperm, both on Roberts' underwear and her cervical smear. DNA analysis was able to match the sperm found on the underwear to defendant. Viewing this evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found the essential elements of sexual penetration were proven beyond a reasonable doubt.

Finally, defendant argues that the trial court made a clerical error by indicating a 27-to-60-year sentence for the domestic violence counts. While there clearly was a clerical error in the initial judgment of sentence, this error was later rectified by the court. No further discussion is therefore necessary.

Affirmed.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Douglas B. Shapiro